

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

SPERRY ASSOCIATES FEDERAL
CREDIT UNION,

Plaintiff,

Civ. No. 10-00029 (DRD)

v.

CUMIS INSURANCE SOCIETY, INC.,
Defendants.

ORDER

This matter, having come before the Court on the motion of Plaintiff Sperry Associates Federal Credit Union (“Sperry”) for partial summary judgment on the first count of its Amended Complaint in the action; and the motion of Defendant CUMIS Insurance Society, Inc. (“CUMIS”) for summary judgment dismissing Sperry’s complaint in its entirety, or, in the alternative, partial summary judgment; and the Court having considered the submissions of the parties and oral arguments; and for the reasons set forth in the opinion,

IT IS on this 14th day of August 2012, hereby ORDERED that Sperry’s motion is GRANTED and CUMIS’s motion is DENIED.

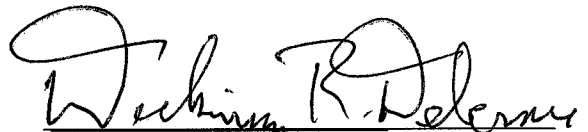
1. Sperry is entitled to judgment as a matter of law for declaratory relief as to Count One of the Amended Complaint, regarding CUMIS’s duty to indemnify Sperry under Coverage Part A of the Bond, for any Losses resulting directly from acts committed by CU National Mortgage, LLC (“CUN”), U.S. Mortgage Corp (“USM”) and or any partner,

officer or employee of those entities, while acting as “employees” of Sperry subject to the terms of the Bond;

2. CUMIS is not entitled to summary judgment or in the alternative partial summary judgment dismissing the Amended Complaint or any of the remaining causes of action in the Amended Complaint;

3. With respect to Count One of the Amended Complaint, the Court hereby CONCLUDES AND DECLARES as follows:

- a. CUN and Michael McGrath are “employees” of Sperry as the term is defined within the Bond issued by CUMIS to Sperry;
- b. Michael McGrath acted with manifest intent to cause Sperry to suffer a loss;
- c. CUMIS therefore has a duty to indemnify Sperry for these losses under Coverage Part A of the Bond.¹


DICKINSON R. DEBEVOISE, U.S.S.D.J.

¹ There remains to be resolved 1) count three as to damages resulting from the breach of contract for losses covered under the Bond, as concluded in the within judgment for declaratory relief concerning count one; and 2) count four with respect to the bad faith claim and associated extra-contractual damages.